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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES INTERNATIONAL ) No. C07-2766 PJH  
UNION, LOCAL 790 )

Plaintiff,

v.

JOSEPH P. NORELLI, Individually, and in his  
capacity as Regional Director, NATIONAL  
LABOR RELATIONS BOARD, REGION 20;  
ROBERT J. BATTISTA, Individually and in  
his Capacity as Chairman and Member of the  
NATIONAL LABOR RELATIONS BOARD;  
PETER N. KIRSANOW, Individually, and in  
his Capacity as a Member, NATIONAL  
LABOR RELATIONS BOARD; DENNIS P.  
WALSH, Individually, and in his Capacity as a  
Member, NATIONAL LABOR RELATIONS  
BOARD; WILMA B. LIEBMAN, Individually,  
and in her Capacity as a Member of the  
NATIONAL LABOR RELATIONS BOARD;  
PETER CARY SHAUMBER, Individually, and  
in his Capacity as a Member, NATIONAL  
LABOR RELATIONS BOARD,

Defendants.

**NOTICE OF MOTION AND MOTION  
FOR TEMPORARY RESTRAINING  
ORDER PENDING SCHEDULED  
HEARING ON MOTION FOR  
PRELIMINARY INJUNCTION, SET  
FOR JUNE 27, 2007**

Date:

Time:

Judge:

To DEFENDANTS JOSEPH P. NORELLI, Regional Director, NATIONAL LABOR  
RELATIONS BOARD ("NLRB"), REGION 20; ROBERT J. BATTISTA, Chairman and Member  
of the NLRB; PETER N. KIRSANOW, Member of the NLRB; DENNIS P. WALSH, Member of

1 the NLRB; WILMA B. LIEBMAN, Member of the NLRB; PETER CARY SHAUMBER, Member  
 2 of the NLRB, and their attorney(s), Notice having already been given by telephonic message and  
 3 electronic mail message to Nancy Platt Esq., FURTHER NOTICE IS HEREBY GIVEN that,  
 4 today, June 7, 2007, PLAINTIFF SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL  
 5 790 ("Local 790") will move the above-entitled Court for a Temporary Restraining Order under  
 6 Fed.R.Civ.P. 65, restraining and enjoining you, your officers, agents, servants, employees and  
 7 attorneys, and all those in active concert or participation with you from: conducting a de-  
 8 authorization election pursuant to the Decision and Order of the NLRB, dated March 20, 2007, in  
 9 NLRB Case No. 20-UD-445, reported as *Covenant Aviation Security, LCC and Stephen J. Burke,*  
 10 *Petitioner and SEIU Local 790*, 349 NLRB No. 67 (hereinafter "NLRB Decision and Order").  
 11 Plaintiff will request that the Temporary Restraining Order be effective immediately upon its  
 12 execution by the Court and remain in effect until the Honorable Judge Phyllis J. Hamilton has  
 13 ruled on Plaintiff's pending Motion for Preliminary Injunction after the Show Cause Hearing she  
 14 scheduled for June 27, 2007, by issuing the Order to Show Cause Why Preliminary Injunction  
 15 Should Not Issue on June 1, 2007.

16 The grounds for Plaintiff's motion are that there is currently pending before Judge  
 17 Hamilton a dispute between Plaintiff and Defendants regarding whether the NLRB Decision and  
 18 Order and any action to implement it constitute actions beyond the jurisdiction of the NLRB  
 19 because they are in violation of a clear and mandatory statutory prohibition set forth at Section  
 20 9(e)(1) of the National Labor Relations Act, 29 U.S.C. § 159(e)(1). Based upon moving papers  
 21 and legal argument submitted by Plaintiff, Judge Hamilton has issued an Order to Show Cause  
 22 Why a Preliminary Injunction Should Not Issue restraining and enjoining Defendants from taking  
 23 any action to conduct a de-authorization election pursuant to the NLRB Decision and Order. Judge  
 24 Hamilton is away from the court for three weeks. Consequently, the earliest date she could  
 25 schedule a hearing on the Order to Show Cause was June 27, 2007, at 9:00 a.m., which is when the  
 26 matter is scheduled to be heard.

27 An original suit in equity under the general jurisdiction of the above-entitled Court under  
 28 28 U.S.C. § 1337(a), is proper where, as here, the Decision and Order of the NLRB violated a clear

1 statutory prohibition and was, therefore, in excess of the Board's jurisdiction, to the harm of the  
 2 Plaintiff, and there is no adequate means by which to obtain judicial review of the Board's action.  
 3 (See *National Association of Agriculture Employees v. Federal Labor Relations Authority*, 473  
 4 F.3d 983, 988, fn 5 (9<sup>th</sup> Cir. 2007); *Bays v. Miller*, 524 F.2d 631 (9<sup>th</sup> Cir. 1975); *Leedom v. Kyne*,  
 5 358 U.S. 184 (1958).)

6 Defendants, despite being aware of the pendency and scheduled hearing date for Plaintiff's  
 7 Motion for Preliminary Injunction, have announced in writing an intent to mail out de-  
 8 authorization election ballots on June 22, 2007, pursuant to the Decision and Order of the NLRB.  
 9 See Declaration of David Rosenfeld in Support of Temporary Restraining Order, filed concurrently  
 10 herewith, at ¶ 20, Ex. A. In so doing, Defendants are exploiting the delay in the scheduled hearing  
 11 regarding Plaintiff's Motion for Preliminary Injunction occasioned by Judge Hamilton's absence.

12 Plaintiff has stipulated to the scheduling of Defendants' Motion to Dismiss to be heard on  
 13 the same date and at the same time scheduled for the hearing on Plaintiff's Motion for Preliminary  
 14 Injunction. Rosenfeld Dec., ¶ 22. Defendants have not reciprocated that reasonable, professional  
 15 courtesy by briefly delaying the de-authorization election until Judge Hamilton has an opportunity  
 16 to hear argument regarding whether an injunction should issue and to rule on Plaintiff's and  
 17 Defendants' respective motions.

18 Plaintiff will suffer irreparable harm if the Court does not enjoin further action by  
 19 Defendants because Plaintiff has no other remedy at law and, if an election based on the de-  
 20 authorization petition is allowed to take place, contrary to law, will face violation of its rights  
 21 under the NLRA, substantial costs and extreme administrative and organizational burdens  
 22 associated with campaigning against the unlawful de-authorization proposal, disruption of its  
 23 members' workplace resulting from the competing campaigns and controversy surrounding the  
 24 conducting of an unlawful election, and will unjustifiably and unlawfully face potential jeopardy to  
 25 its ability to fulfill its functions as hundreds of employees' chosen collective bargaining  
 26 representative. See Declaration of Jamie Thompson in Support of Preliminary Injunction, on file  
 27 with this Court.

28 As argued in the Memorandum of Points and Authorities in Support of Preliminary

1 Injunction, Plaintiff has a substantial likelihood of prevailing on the merits of its claim against  
 2 Defendants because the plain language of NLRA §9(e)(1), 29 U.S.C. § 159(e)(1), case law  
 3 construing it, and the legislative history of the provision make clear that the NLRB is prohibited  
 4 from conducting a de-authorization election unless it is based on a petition signed by 30 percent of  
 5 the members of a bargaining unit at a time when they are covered by an agreement containing an  
 6 union security clause. It is undisputed that the signatures gathered in support of the petition at  
 7 issue herein were collected two or more months before any tentative agreement was ratified and,  
 8 indeed, a month before contract negotiations even began. The petition itself was filed before any  
 9 agreement was in effect. Those fatal deficiencies are not cured by the subsequent re-filing of the  
 10 same petition, because the petition is not supported by signatures of individuals who were covered  
 11 by an agreement containing a union security clause.

12 Defendants, who delayed the election at issue herein for nearly a year and a half prior to  
 13 ruling on it, will suffer no harm as a result of delaying the election for a mere five days until the  
 14 Show Cause Hearing and whatever additional time is needed for Judge Hamilton to rule on  
 15 Plaintiff's Motion for Preliminary Injunction. No ballots have been mailed and the election can  
 16 proceed if the judge finds it lawful. Moreover, Defendants' Motion to Dismiss will be heard at the  
 17 same time as Plaintiff's Motion for Preliminary Injunction, so Defendants' interests and legal  
 18 positions will be fully addressed by the Court a mere five days after the currently scheduled date  
 19 for the election.

20 Nor will the individual who filed the de-authorization petition be harmed by the very short  
 21 delay in the election. This matter has been pending since January 11, 2006, when the unlawful  
 22 petition was first filed. A further delay of a few days to ensure that employees in the affected  
 23 bargaining unit are not subjected to an election that is beyond the NLRB's jurisdiction to conduct  
 24 will cause no appreciable harm to anyone.

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1 Plaintiff's motion is based on this Notice, the supporting Memorandum of Points and  
2 Authorities filed concurrently herewith, the Declaration of David A. Rosenfeld filed concurrently  
3 herewith, all other papers on file with the court in this matter, and such other oral or written  
4 materials as the Court deems just and proper.

5 Dated: June 7, 2007

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7 WEINBERG, ROGER & ROSENFELD  
A Professional Corporation  
8 Vincent A. Harrington, Jr.  
David A. Rosenfeld  
9 Eric M. Borgerson

10 By:   
11 DAVID A. ROSENFELD  
Attorneys for Plaintiff  
12 Service Employees International Union, Local 790

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